

AMBASSADE DU GRAND-DUCHE DE LUXEMBOURG

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Dear Mr. Secretary:

The Honorable
Warren Christopher
Secretary of State
United States Department of State

I have the honor to present my compliments and to acknowledge receipt of your note dated June 6 by which you refer to discussions held by representatives of our two governments in Washington March 9 and 10, 1995 concerning the Air Transport Services Agreement between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg of August 19, 1986 (hereinafter the Agreement),

I have the pleasure to inform you that the Government of the Grand Duchy of Luxembourg is in agreement with your proposal to have the Agreement amended as follows:

1. Amendments to Article 1:

Paragraphs (f), (j) and (k) shall be amended to read as follows:

(f) "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;

(j) user charge means a charge imposed on airlines for the provision of airport, air navigation or aviation security facilities or services including related services and facilities,

(k) "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;

2. Amendments to Article 3:

The following shall be added to the end of paragraph (1):

"and shall identify whether the airline is authorized to conduct the type of air transportation specified in Annex 1, in Annex 11, or in both. "

3. Amendments to Article 4:

Paragraph (3) shall be amended to read as follows:

(3) This article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 7 (Aviation Security).

4. Amendments to Article 7:

Paragraph (C) shall be deleted, and all remaining paragraphs shall be redesignated numerically.

Paragraphs (1) and (2) shall be amended to read as follows:

(1) In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

(2) The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.

In paragraph (3), change "act in conformity with the aviation security provisions" to read, "act in conformity with all aviation security standards and appropriate recommended practices."

In paragraph (4), the words "and their baggage and" shall be added to the first sentence after the phrase, "and to inspect passengers, crew,"

In paragraph (5), the word "and" in the first clause of the first sentence shall be changed to "or" so that it reads: "airports or air navigation facilities".

5. Amendments to Article 8:

The following shall be added to the end of the first sentence in paragraph (4):

", except as may be specifically provided by the charter regulations of the Country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights."

In paragraph (5), the word "distributed" in the first sentence shall be changed to "disbursed" and the following shall be added to the end of the second sentence:

"on the date the carrier makes the initial application for remittance."

New paragraphs (6) and (7) shall be added to read as follows:

(6) The airlines of each Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Party in freely convertible Currencies according to local currency regulation.

(7) (a) In operating or holding out the authorized services on the agreed routes, provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements, any designated airline of one Party may enter into cooperative marketing arrangements Such as blocked-space, code-sharing or leasing arrangements, with

i) all airline or airlines of either Party; and

ii) all airline or airlines of a third country, provided that Such third Country authorizes or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country.

(b) Notwithstanding the proviso of ii above, if an airline of one Party holds out service between a point in the other Party and a point in a third country by means of a code-share arrangement on any segment of that service with an airline of the other Party, the first Party must authorize or allow any airline of the other Party to code share with any airline on any segment of services between that third country and the other Party via a point or points in the first Party.

6. Amendments to Article 9:

At the end of subparagraph (2)(b), the word "and" shall be deleted. The "." shall be replaced by "; and" at the end of subparagraph (2)(c).

A new subparagraph (2)(d) shall be added to read its follows:

(d) promotional and advertising materials introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the contracting Party in which they are taken on board.

7. Amendments to Article 10:

At the end of paragraph (1), the words "and non-discriminatory" shall be deleted and the following shall be added:

"not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed. "

Paragraph (2) shall be amended, and new paragraphs (3) and (4) shall be added to read as follows:

(2) User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

(3) Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

(4) Neither Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this article.

8. Amendments to Article 11:

Paragraph (2) shall be deleted, and the remaining paragraphs and internal references shall be renumbered accordingly.

The following shall be added to the beginning of paragraph (2):

"Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers, based upon commercial considerations in the marketplace. Consistent with this right,"

The words ", programs for charter flights," shall be added after the words "filing of schedules" in the first sentence of paragraph (4).

9. Amendments to Article 12:

Subparagraph (1)(a) shall be amended to read: "(a) prevention of unreasonably discriminatory prices or practices;"

The words "30 days" shall be substituted for "60 days" in paragraph (2).

The following shall be added to the end of paragraph (2):

"Neither Party shall require the notification or filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes,"

The words "paragraph (1)" shall be substituted for "paragraph (a)" in the second sentence of paragraph (3).

Paragraph (4) shall be deleted.

10. A new Article 12 bis shall be added to the Agreement to read as follows:

Article 12 bis Intermodal Services

Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo

services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

11. Amendments to Article 14:

The following shall be added after the end of the first sentence in paragraph (3):

"The tribunal, once formed, may recommend interim relief measures pending its determination. "

The words, "or as directed by the tribunal" shall be added after "Except as otherwise agreed" in paragraph (4).

The words, "to the degree" shall be added before "consistent" and the words "of the" shall be added after "award" in paragraph (7).

12. Article 16 shall be amended to read as follows:

"If, after entry into force of this Agreement, both Parties become party to a multilateral agreement that addresses matters covered by this Agreement, they shall consult to determine whether this Agreement should be revised to take into account the multilateral agreement. "

13. The Annex to the Agreement shall be retitled as Annexes I, II, and III, and shall be amended to read as follows:

Annex I
Scheduled Air Transportation

Section 1 Routes

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation between points on the following routes:

A. Routes for the airline or airlines designated by the Government of the United States of America:

From points behind the United States via the United States and intermediate points to a point or points in Luxembourg and beyond.

B. Routes for the airline or airlines designated by the Government of the Grand Duchy of Luxembourg:

From points behind Luxembourg via Luxembourg and intermediate points to a point or points in the United States and beyond.

Section 2 Operational Flexibility

Each designated airline may, on any or all flights and at its option:

1. Operate flights in either or both directions;
2. Combine different flight numbers within one aircraft operation;
3. Serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
4. Omit stops at any point or points;
5. Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
6. Serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this agreement, provided that the service serves a point in the territory of the Party designating the airline.

Section 3 Change of Gauge

On any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.

Annex II

Charter Air Transportation

Section 1

The designated airlines of each Party shall have the right to carry international charter traffic in passengers (and their accompanying baggage) and/or cargo between any point or points in one Party via intermediate points to any point or points in the other Party and

beyond, provided that the service must serve a point in the territory of the Party designating the airline.

In the performance of services covered by this Article, the airlines of one Party shall also have the right: (1) to make stopovers at any points whether within or outside the territory of either Party; (2) to carry traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory with traffic originating in the other Party's territory; (4) to combine on the same aircraft traffic originating at or destined for a point or points behind a point in its territory with U.S.-Luxembourg traffic; and (5) to combine on the same aircraft traffic originating at or destined for all intermediate point or points, or traffic originating at or destined for a point or points beyond the territory of either Party with U.S.-Luxembourg traffic.

Each Party shall extend favorable consideration to applications by the designated airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

Section 2

Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

Section 3

Except with respect to the consumer protection rules referred to in the preceding paragraph above, neither Party shall require an airline designated under this annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under Section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.

Annex III

Principles of Non-Discrimination Within and Competition Among Computer Reservations Systems

Recognizing that Article 11 (Fair Competition) of the U.S.-Luxembourg Agreement guarantees the airlines of both Parties "a fair and equal opportunity to compete, "

Considering that one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the traveling public and the ability of all airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities, and

Considering that it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems:

1. The Parties agree that CRSs shall have integrated primary displays for which:

a. Information regarding international air services, including the construction of connections on those services, shall be edited and displayed based on non-discriminatory and objective criteria that are not influenced, directly or indirectly, by airline or market identity. Such criteria shall apply uniformly to all participating airlines.

b. CRS data bases shall be as comprehensive as possible.

c. CRS vendors shall not delete information submitted by participating airlines; such information shall be accurate and transparent; for example, code-shared and change-of-gauge flights and flights with stops should be clearly identified as having those characteristics.

d. All CRSs that are available to travel agents who directly distribute information about airline services to the traveling public in either Party's territory shall not only be obligated to, but shall also be entitled to, operate in conformance with the CRS rules that apply in the territory where the CRS is being operated.

e. Travel agents shall be allowed to use any of the secondary displays available through the CRS so long as the travel agent makes a specific request for that display.

2. A Party shall require that each CRS vendor operating in its territory allow all airlines willing to pay any applicable non-discriminatory fee to participate in its CRS. A Party shall require that all distribution facilities that a system vendor provides shall be offered on a non-discriminatory basis to participating airlines. A Party shall require that CRS vendors display, on a non-discriminatory, objective, carrier-neutral and market-neutral basis, the international air services of participating airlines in all markets in which they wish to sell those set-vices. Upon request, a CRS vendor shall disclose details of its data base update and storage procedures, its criteria for editing and ranking information, the

weight given to such criteria, and the criteria used for selection of connect points and inclusion of connecting flights.

3. CRS vendors operating in the territory of one Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party, if the CRS complies with these principles.
4. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to access to and use of communication facilities, selection and use of technical CRS hardware and software, and the technical installation of CRS hardware, than those imposed on its own CRS vendors.
5. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more restrictive requirements with respect to CRS displays (including edit and display parameters), operation, or sale than those imposed on its own CRS vendors.
6. CRSs in use in the territory of one Party that comply with these principles and other relevant non-discriminatory regulatory, technical, and security standards shall be entitled to effective and unimpaired access in the territory of the other Party. One aspect of this is that a designated airline shall participate in such a system as fully in its homeland territory as it does in any system offered to travel agents in the territory of the other Party. Owners/operators of CRSs of one Party shall have the same opportunity to own/operate CRSs that conform to these principles within the territory of the other Party as do owners/operators of that Party. Each Party shall ensure that its airlines and its CRS vendors do not discriminate against travel agents in their homeland territory because of their use or possession of a CRS also operated in the territory of the other Party.

In addition, I have the honor to inform you that the Luxembourg Government is in agreement with your proposal that the competent authorities of the United States of America and the Grand Duchy of Luxembourg shall permit operations in accordance with the terms of this Amendment effective from the date of our present note in reply.

This exchange of notes between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg will constitute an agreement between our two governments, which shall enter into force on a date to be determined in a subsequent exchange of diplomatic notes indicating that all necessary internal procedures have been completed by the Parties.

Accept, Dear Mr. Secretary, the renewed assurances of my highest consideration.

Washington, DC, June 6, 1995

Alphonse Berns

Ambassador of the Grand Duchy of Luxembourg
to the United States of America